

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE
DEFIBRILLATORS PRODUCTS
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to:

Richard Harvey,

Civil No. 06-73 (DWF/AJB)

Plaintiff,

v.

Guidant Corporation, and
Guidant Sales Corporation,

Defendants.

ORDER

Richard B. McNamara, Esq., Stephanie A. Bray, Esq., and Elizabeth M. Leonard, Esq.,
Wiggin & Nourie, P.A., counsel for Plaintiff.

Timothy A. Pratt, Esq., Shook Hardy & Bacon LLP; and Joseph M. Price, Esq., Faegre &
Benson LLP, counsel for Defendants.

Plaintiff Richard Harvey has requested that this Court reconsider its July 3, 2006
Order granting Guidant Corporation and Guidant Sales Corporation's (collectively
"Guidant") Motion to Dismiss for Failure to Comply with the Court's January 31, 2006
Order.¹

¹ Harvey failed to comply with the Local Rules of the United States District
Court for the District of Minnesota when he filed his request. Under Local Rule 7.1(g),
(Footnote Continued on Next Page)

On January 31, 2006, the Court entered Pretrial Order No. 5, requiring all plaintiffs to submit a completed plaintiff's fact sheet ("PFS") "no later than 30 days after the entry of this Order." Harvey's deadline, therefore, for submitting his PFS was March 2, 2006. He failed to do so. On May 4, 2006, Guidant filed a Motion to Dismiss for Failure to Comply with the Court's January 31, 2006 Order. Shortly thereafter, the parties' counsel had a telephone conversation about Harvey's PFS. Harvey asserts that it was his counsel's understanding that Guidant would withdraw its Motion to Dismiss after receiving the PFS. In response, Guidant asserts that its counsel represented to Harvey that Guidant would not withdraw its Motion to Dismiss unless Harvey provided Guidant with a completed PFS and a valid medical authorization by May 12, 2006. On May 18, 2006, Harvey submitted an incomplete and unsigned PFS, with a cover letter that said "a signed copy of that fact sheet will be forwarded by regular mail to your [sic] in the near future along with those documents in our possession response [sic] to defendants' document production request." Harvey never did so. Moreover, he also never filed an opposition to Guidant's Motion to Dismiss. On July 3, 2006, the Court granted Guidant's Motion to Dismiss and dismissed Harvey's Complaint with prejudice. Nearly one month later, Harvey filed a request for reconsideration.

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motions to reconsider are prohibited except by express permission of the Court. Nevertheless, the Court considers Harvey's filing as a request for leave of the Court to file a motion to reconsider. After receiving Harvey's request, the Court asked Guidant to submit a response to Harvey's request. Guidant submitted its response on August 11, 2006.

Pursuant to Local Rule 7.1(g), a request for leave to file a motion for reconsideration will only be granted upon a showing of “compelling circumstances.” A motion to reconsider should not be employed to relitigate old issues but to “afford an opportunity for relief in extraordinary circumstances.” *Dale & Selby Superette & Deli v. United States Dept. of Agriculture*, 838 F. Supp. 1346, 1348 (D. Minn. 1993).

Here, Harvey contends that the Court should reconsider its dismissal because Harvey “diligently sought” to comply with the Court’s January 31 Order and because he provided a “completed” PFS to Guidant’s counsel. The timeline and the record belie Harvey’s arguments.

First, Harvey had ample notice of the need and time to complete the PFS. Indeed, he acknowledges that a representative from the Plaintiffs’ Liaison Committee (“PLC”) contacted him to ask about the status of his PFS, and he acknowledges having a conversation with Guidant’s counsel about his PFS. In addition, Harvey had access to the Court’s website (www.mnd.uscourts.gov), which has a page dedicated to the Guidant MDL and on which all of the Court’s Guidant MDL Orders have been posted. Nevertheless, Harvey failed to act diligently and complete his PFS before the Court entered its July 3, 2006 Order.

Second, the Court’s review of Harvey’s May 18, 2006 PFS reveals that it is unsigned, has numerous unanswered questions, and in certain spots contains only the answer of “see medical records.” It is the Court’s understanding that to date Harvey has never submitted an amended and more complete PFS, nor has he provided Guidant with

his medical records or a completed medical authorization form. Given this, the Court finds that Harvey's PFS is far from completed.

The Court is sensitive to viewing each plaintiff's arguments separately while also ensuring that this MDL operates efficiently. Certain measures were enacted, including posting the Court's Orders on its website, emailing Harvey's counsel with the Court's Pretrial Order No. 2, and requiring the PLC to contact Harvey's counsel about the PFS, in an attempt to avoid the drastic measure of dismissing Harvey's Complaint with prejudice. Harvey failed to adequately respond to those measures. Therefore, having reviewed the record and the parties' arguments, the Court finds that no compelling circumstances warrant reconsideration.

In the alternative, Harvey makes his request pursuant to Rule 60(b)(1) and (6) of the Federal Rules of Civil Procedure, under which a party may move for relief from a judgment for "mistake, inadvertence, surprise, or excusable neglect," or "any other reason justifying relief from the operation of judgment." Fed. R. Civ. P. 60 (b). The Court finds none of those circumstances present here, especially given the timeline and the record involved.

Therefore, for the reasons stated above, **IT IS HEREBY ORDERED:**

1. Plaintiff Richard Harvey's Motion for Reconsideration and to Vacate the Court's Order of July 3, 2006 and Subsequent Dismissal Pursuant to FRCP 60(b)(1) and (6) (Doc. No. 9) is **DENIED**.

Dated: August 15, 2006

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court